



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

SEP 24 2004

REPLY TO THE ATTENTION OF

AE-17J

Jeffrey P. Bees  
Youngstown Thermal  
205 North Avenue  
Youngstown, Ohio 44502

Re: In the Matter of Youngstown Thermal  
L.L.C.  
CAA Docket No.

Dear Mr. Bees:

I have enclosed a complaint filed against Youngstown Thermal L.L.C., under Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d). The complaint alleges violations of the Ohio State Implementation Plan.

As provided in the complaint, if you would like to request a hearing, you must do so in your answer to the complaint. Please note that if you do not file an answer with the Regional Hearing Clerk within 30 days of your receipt of this complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. If you wish to request a conference, or if you have any questions about this matter, please contact, Susan Prout, Associate Regional Counsel (C-14J), 77 West Jackson Boulevard, Chicago, Illinois 60604, at (312) 353-1029.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Rothblatt".

Stephen Rothblatt, Director  
Air and Radiation Division

Enclosures

cc: Robert Hodanbosi, Chief  
Division of Air Pollution Control

Ohio Environmental Protection Agency

Dennis Bush, APC Supervisor

Northeast District Office

Ohio Environmental Protection Agency

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:

Youngstown Thermal L.L.C.  
Youngstown, Ohio,

Respondent.

) Docket No. CAA-05-2004 0043  
)  
) Proceeding to Assess a  
) Civil Penalty under  
) Section 113(d) of the  
) Clean Air Act,  
) 42 U.S.C. § 7413(d)  
)

Administrative Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is Youngstown Thermal L.L.C. (Youngstown Thermal), a corporation doing business in Ohio.

Statutory and Regulatory Background

4. Section 110 of the Act, 42 U.S.C. § 7410, requires each State to adopt and submit a plan which provides for the implementation, maintenance, and enforcement of any national primary or secondary standard established pursuant to Section 109 of the Act, 42 U.S.C. § 7409. These plans are required to include enforceable emissions limitations, control measures, schedules for compliance, emissions monitoring requirements and permit programs for new and modified sources.

5. 40 CFR § 52.23 provides that failure to comply with any approved regulatory provision of a State Implementation Plan (SIP) or with any permit limitation or condition contained within an operating permit issued under an EPA-approved program that is incorporated into the SIP, shall render the person so failing to comply in violation of a requirement of an applicable implementation plan and subject to enforcement action under Section 113 of the Clean Air Act.

6. Pursuant to Section 110 of the Act, 42 U.S.C. § 7410, the Administrator approved OAC Chapter 3745-17 as part of the Federally enforceable SIP on May 27, 1994 (59 Fed. Reg. 27464).

7. OAC 3745-17-10(C) states, in pertinent part, that any owner or operator of fuel burning equipment which is located within, among other places, Mahoning County, Ohio, shall operate said equipment so that the particulate emissions do not exceed the allowable emission rate specified by "Curve P-1" of "Figure I".

8. Section 502(a) of the Clean Air Act, 42 U.S.C. § 7661(a), requires a major source to operate with a permit issued pursuant to an approved 40 C.F.R. Part 70 ("Title V") operating permit program.

9. The State of Ohio operating permit program was granted approval on August 15, 1995, with an effective date of October 1, 1995 (60 Fed. Reg. 42045; 40 C.F.R. Pt. 70, App. A).

10. The regulation at 40 C.F.R. § 70.6(b)(1) specifies that all terms and conditions in a permit issued under a Part 70 program, including any provisions designed to limit a source's

potential to emit, are enforceable by the U.S. EPA under the Act.

11. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for SIP and Title V permit violations that occurred from January 31, 1997 to March 15, 2004, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

12. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

13. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

#### **General Allegations**

14. Youngstown Thermal owns and operates a steam supply facility at 205 North Avenue, Youngstown, Ohio. This facility consists of three spreader stoker coal fired boilers each controlled by a sidestream baghouse and multiclone (Boilers #2, #3, and #4) and one natural gas fired backup boiler (Boiler #1).

15. Boilers #2, #3, and #4 are rated at 113 mmBtu/hr, 113 mmBtu/hr, and 110 mmBtu/hr respectively.

16. Youngstown Thermal was issued a Title V Permit on February 18, 1999 (the Permit). Part III, Emission Unit B002, B003, and B004, A.I.1. of this permit incorporates a particulate emission limitation of 0.14 lbs/mmBtu of heat input pursuant to OAC 3745-17-10(C)(1) for Boilers #2, #3, and #4.

17. The Ohio SIP, OAC 3745-17-10(C)(1) regulated Youngstown Thermal's emissions prior to the issuance of its Title V Permit on February 18, 1999. The Ohio SIP required Youngstown Thermal to maintain a particulate emission limitation of 0.14 lbs/mmBtu at Boilers #2, #3, and #4.

18. Part III, Emission Unit B002, B003, and B004, A.II.1. of the Permit requires Youngstown Thermal to maintain the pressure drop across the baghouses controlling Boilers #2, #3, and #4 in the range of 2.0-7.0 inches of water while the boilers are in operation.

19. Part III, Emission Unit B002, B003, and B004, A.III.6. of the Permit requires Youngstown thermal to install and properly operate a pressure drop monitor across each baghouse. It also requires Youngstown Thermal to record pressure drop across each baghouse daily.

20. Part III, Emission Unit B002, B003, and B004, A.IV.3. of the Permit requires Youngstown Thermal to report all pressure drop excursions to the Ohio Environmental Protection Agency.

21. Part III, Emission Unit B002, B003, and B004, A.V.2. of the Permit requires Youngstown Thermal to conduct a particulate emissions test for Boilers #2, #3, and #4 once between years 2 and 3 of the Permit and once during the last year of the Permit.

22. Since the Permit was issued February 18, 1999, this condition required Youngstown Thermal to conduct a stack test some time between February 18, 2000 and February 18, 2002.

23. The first stack test on Boiler #4 under the terms of the Permit was conducted March 11, 2002.

24. Between 1999 and 2002, Youngstown Thermal conducted six stack tests on Boilers #2 and #4 which showed these boilers to be emitting in excess of the 0.14 lbs/mmBtu particulate matter limit. These results are as follows:

Test Date	Boiler	Results lbs/mmBtu
January 22, 1999	Boiler #2	0.251
February 4, 1999	Boiler #2	0.393
March 5, 1999	Boiler #2	0.161
January 7, 2000	Boiler #2	0.227
January 25, 2000	Boiler #2	0.283
March 11, 2002	Boiler #4	0.192

25. U.S. EPA conducted a facility air inspection at Youngstown Thermal on February 13, 2002.

26. On May 16, 2002, U.S. EPA issued a notice of violation to Youngstown Thermal for violations of the Ohio SIP regulation OAC 3745-17-10(C)(1) and Title V permit limits and requirements, 40 C.F.R. Part 70, that occurred during the period from March 12, 1998 until March 11, 2002.

27. On July 1, 2002, U.S. EPA and Youngstown Thermal held a conference to discuss the May 16, 2002 notice of violation.

#### Count I

28. Complainant incorporates paragraphs 1 through 27 of

this complaint, as if set forth in this paragraph.

29. Stack tests conducted by Youngstown Thermal on Boiler #2 on January 22, 1999 and February 4, 1999 showed Boiler #2 to be emitting 0.251 and 0.393 lbs/mmBtu of particulate matter respectively.

30. OAC 3745-17-10(C)(1) requires Youngstown Thermal to emit no greater than 0.14 lb/mmBtu of particulate matter.

31. Youngstown Thermal violated OAC 3745-17-10(C)(1) with emission rates of 0.251 and 0.393 lbs/mmBtu of particulate matter.

#### **Count II**

32. Complainant incorporates paragraphs 1 through 27 of this complaint, as if set forth in this paragraph.

33. Stack tests conducted by Youngstown Thermal on Boiler #2 on March 5, 1999, January 7, 2000, and January 25, 2000, showed Boiler #2 was emitting 0.161, 0.227 and 0.283 lbs/mmBtu of particulate matter respectively.

34. OAC 3745-17-10(C)(1) and the Permit at Part III, Emission Unit B002, A.I.1. require Youngstown Thermal to emit no greater than 0.14 lb/mmBtu of particulate matter.

35. Youngstown Thermal violated OAC 3745-17-10(C)(1) and the Permit at Part III, Emission Unit B002, A.I.1. with emission rates of 0.161, 0.227 and 0.283 lbs/mmBtu of particulate matter.

#### **Count III**

36. Complainant incorporates paragraphs 1 through 27 of this complaint, as if set forth in this paragraph.

37. The stack test conducted by Youngstown Thermal on



Boiler #4 on March 11, 2002, showed Boiler #4 was emitting 0.192 of particulate matter.

38. OAC 3745-17-10(C)(1) and the Permit at Part III, Emission Unit B004, A.I.1. require Youngstown Thermal to emit no greater than 0.14 lb/mmBtu of particulate matter.

39. Youngstown Thermal violated OAC 3745-17-10(C)(1) and the Permit with an emission rate of 0.192 lbs/mmBtu of particulate matter.

#### **Count IV**

40. Complainant incorporates paragraphs 1 through 27 of this complaint, as if set forth in this paragraph.

41. The Permit at Part III, Emissions Unit B004, A.V.2. requires Youngstown Thermal to conduct a particulate emissions test stack test on Boiler #4 once between years 2 and 3 of the Permit, or some time between February 18, 2000 and February 18, 2002.

42. Youngstown Thermal conducted its first particulate emissions test under the terms of the Permit on March 11, 2002.

43. Youngstown Thermal's violated the Permit at Part III, Emissions Unit B004, A.V.2. by failing to conduct its first particulate emissions test under the terms of the Permit until March 11, 2002.

#### **Count V**

44. Complainant incorporates paragraphs 1 through 27 of this complaint, as if set forth in this paragraph.

45. The Permit at Part III, Emissions Unit B002 and B003, A.II.1 requires Youngstown Thermal to maintain the pressure drop

across the baghouses controlling Boilers #2 and #3 within the range of 2.0 - 7.0 inches of water while the boilers are in operation.

46. During U.S. EPA's February 13, 2002 facility air inspection, U.S. EPA observed that the manometer on Boilers #2 and #3 read 7.5 inches of water.

47. During U.S. EPA's February 13, 2002 facility air inspection, Youngstown Thermal provided records to U.S. EPA that showed that Youngstown Thermal had failed on numerous occasions to maintain the pressure drop across the baghouses controlling Boilers #2 and #3 within the range of 2.0 - 7.0 inches of water while the boilers were in operation.

48. Youngstown Thermal violated the Permit at Part III, Emissions Unit B002 and B003, A.II.1 by failing to maintain the pressure drop across the baghouses controlling Boilers #2 and #3 within the range of 2.0 - 7.0 inches of water while the boilers are in operation.

#### **Count VI**

49. Complainant incorporates paragraphs 1 through 27 of this complaint, as if set forth in this paragraph.

50. The Permit at Part III, Emissions Unit B002 and B003, A.III.6. requires Youngstown Thermal to install and properly operate pressure drop monitors across Boilers #2 and #3 and to record daily pressure drop readings across Boilers #2 and #3.

51. During U.S. EPA's February 13, 2002 facility air inspection, U.S. EPA observed that Youngstown Thermal was not properly operating the pressure drop monitors across Boilers #2

and #3.

52. During U.S. EPA's February 13, 2002 facility air inspection, U.S. EPA observed that Youngstown Thermal failed to record daily pressure drop readings from these monitors until the middle of January 2002.

53. Youngstown Thermal violated the Permit at Part III, Emissions Unit B002 and B003, A.III.6. by failing to properly operate the pressure drop monitor and to record pressure drop readings.

#### **Count VII**

54. Complainant incorporates paragraphs 1 through 27 of this complaint, as if set forth in this paragraph.

55. The Permit at Part III, Emissions Unit B002 and B003, A.IV.3. requires Youngstown Thermal to report pressure drop excursions identified on Boilers #2 and #3 to OEPA.

56. During its February 13, 2002 facility air inspection, U.S. EPA observed that Youngstown Thermal had failed to report pressure drop excursions identified on Boilers #2 and #3 to OEPA.

57. Youngstown Thermal violated the Permit at Part III, Emissions Unit B002 and B003, A.IV.3. by failing to report pressure drop excursions identified on Boilers #2 and #3 to OEPA.

#### **Proposed Civil Penalty**

58. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).

59. Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the Act,

Complainant proposes that the Administrator assess a civil penalty against Respondent of \$25,000. Payment of this penalty, with interest, may be made under a delayed schedule. Complainant evaluated the facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 (penalty policy). Enclosed with this complaint is a copy of the penalty policy.

60. The Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

#### **Rules Governing This Proceeding**

61. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (the Consolidated Rules) at 40 C.F.R. Part 22 govern this proceeding to assess a civil penalty. Enclosed with the complaint served on Respondent is a copy of the Consolidated Rules.

#### **Filing and Service of Documents**

62. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

63. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Susan Prout to receive any answer and subsequent legal documents that Respondent serves in this proceeding. You may telephone Ms. Prout at (312) 353-1029. Ms. Prout's address is:

Susan Prout (C-14J)  
Associate Regional Counsel  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

**Penalty Payment**

64. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and by delivering the check to:

U.S. Environmental Protection Agency  
Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Ms. Prout and to:

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

**Opportunity to Request a Hearing**

65. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator

proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a hearing, Respondent must specifically make the request in its answer, as discussed in paragraphs 66 through 71 below.

**Answer**

66. Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified in paragraph 62, above, and must serve copies of the written answer on the other parties.

67. If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

68. Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the

allegation is deemed denied.

69. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation.

70. Respondent's answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing as discussed in paragraph 65 above.

71. If Respondent does not file a written answer within 30 calendar days after receiving this complaint the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

#### **Settlement Conference**


72. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Ms. Prout at the address or phone number specified in paragraph 63, above.

73. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

**Continuing Obligation to Comply**

74. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable federal, state, or local law.

9/24/2004  
Date

  
Stephen Rothblatt, Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

CAA-05- 2004 0043



In the Matter of Youngstown Thermal  
Docket No.

CAA-05- 2004 0043  
CERTIFICATE OF SERVICE

I, Loretta Shaffer, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number CAA-05- 2004 0043 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies of the Administrative Complaint, copies of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits" at 40 C.F.R. Part 22, and copies of the penalty policy described in the Administrative Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

on the 27th day of September, 2004.

US ENVIRONMENTAL  
PROTECTION AGENCY  
REGION V

04 SEP 27 P2:28

RECEIVED  
REGIONAL HEARING  
CLERK

Loretta Shaffer  
Loretta Shaffer  
AECAS (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0004 1558 5403